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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/074,830	02/13/2002	Sydney R. Rader	660005.94581	8008

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EXAMINER

HENDRICKS, KEITH D

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 01/09/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/074,830

Applicant(s)

RADER ET AL.

Examiner

Keith Hendricks

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 August 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-7 and 17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-7 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 103

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 1-3, 5-7 and 17 remain rejected under 35 U.S.C. 103(a) as being unpatentable over Vitzthum et al. The reference and rejection are incorporated as cited in a previous Office action.

Applicant's arguments filed August 10, 2005, have been fully considered but they are not persuasive.

At pages 4-5 of the response, applicant states that "[t]hroughout Vitzthum, any extract of hop solids is combined with the CO₂ extract of the hops. Thus, Vitzthum does not describe, teach or suggest using an "extract of hop solids as the sole hopping material" as recited in independent claims 1 and 17." Applicant refers to passages of the reference in support of this argument.

This is not deemed persuasive for the reasons of record, and in light of the following:

- Applicant's reference to passages at column 3 seems to ignore the fact that "the product obtained according to the invention", described as a preferred embodiment at lines 32-38, "*can be used directly for brewing purposes*, unless it is preferred to mix it with the hop components obtained during the aqueous extraction."
- The extract of example 1 is simply a carbon dioxide gas extract which has been further extracted with wet supercritical carbon dioxide (see also claim 5 of the reference). Whether the two carbon dioxide extracts from each step of the two-step process are combined or not, this is still a single hop solids extract provided as the sole hopping material. Applicant's claims are not specific enough to differentiate between minor details of a process for producing a hop extract; however, it is apparent that so long as the hop solids extracts have "no more than .5% w/w alpha acids" and are from a sole source, then the reference meets the instant claims. Applicant's claimed phrase "an extract of hop solids as the sole hopping material" appears to encompass the use of any such extract of hops solids, and merely excludes the use of other types of hopping materials such as natural whole hops.
- Examples 2 and 3 demonstrate the production of hops extracts meeting the instantly-claimed limitations, by being single extracts of CO₂ or NO₂, respectively.

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- Finally, at column 1, lines 32-33, it is stated that "often the organic solvent extracts which are free from tannins are used alone in brewing." Thus it is apparent that this concept was known in the art prior to applicant's claimed invention.

Double Patenting

Applicant's properly-executed terminal disclaimers have been entered and are effective to withdraw the previous double-patenting rejections of record.

Conclusion


THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Keith Hendricks whose telephone number is (571) 272-1401. The examiner can normally be reached on M-F (8:30am-6pm); First Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


KEITH HENDRICKS
PRIMARY EXAMINER